

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 05-1010V

Filed: November 16, 2007

not to be published

ROBERT BUTLER,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

Vaccine Act Entitlement  
Denial Without Hearing

### DECISION<sup>1</sup>

On September 19, 2005, the petitioner filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”).<sup>2</sup> The petitioner alleges that Hepatitis A and IPV vaccinations that he received on October 11, 2002, resulted in “an autoimmune disorder and... aggravated a pre-existing condition of Fibromyalgia.” The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, that petitioner must prove either: 1) he suffered a “Table Injury” -- *i.e.*, an injury falling within the Vaccine Injury Table -- corresponding to one of the vaccinations in question, or 2) that any of his medical problems were actually caused by a vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). My examination of the filed medical records, however, did not uncover any evidence that Mr. Butler suffered a “Table Injury.” Further, the records do not contain a medical expert’s opinion

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<sup>1</sup>This document constitutes my final “decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of this Court shall enter judgment in accord with this decision.

Also, the petitioners are reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4), Rule 18(b)(2) of the Vaccine Rules of this Court, and the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), this decision will be made available to the public unless petitioners file, within fourteen days, an objection to the disclosure of any material in this decision that would constitute “medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.”

<sup>2</sup>The statutory provisions governing the National Vaccine Injury Compensation Program are found in 42 U.S.C. § 300-10 *et seq.* (2000 ed.).

indicating that any of Mr. Butler's problems were vaccine-caused.

Under the statute, a petitioner may not be given a Program award based solely on petitioner's claims alone. Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner's claim, a medical opinion must be offered in support. Petitioner, however, offered no such opinion.

In a motion filed on November 13, 2007, petitioner's counsel asked that I rule upon the record as it now stands, and acknowledged that "an expert opinion has not been filed in this matter." I now rule, as requested.

I am, of course, sympathetic to the fact that Mr. Butler suffers from an unfortunate medical condition. However, under the law I can only authorize compensation when a medical condition either falls within one of the "Table Injury" categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record before me. Accordingly, it is clear from the record in this case that Mr. Butler has failed to demonstrate either that he suffered a "Table Injury" or that his condition was "actually caused" by a vaccination. Therefore, I have no choice but to hereby DENY this claim. In the absence of a timely-filed motion for review of this decision (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accord with this decision.

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George L. Hastings, Jr.  
Special Master